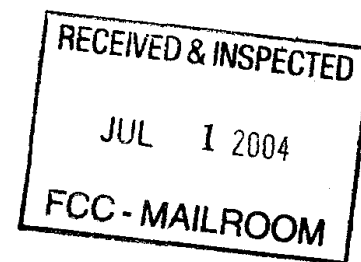


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To: Marlene Dortch From: Robert Rivera
Company: FCC Date: 7-1-04
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Phone: CC: Ms. Carol E. Hatley
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June 29, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Ms. Carol E. Matthey
Deputy Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07891

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JUL 1 2004

FCC - MAILROOM

RE: **STATUS REQUEST**; In the Matter of: Request for Review by Spectrum Communications Cabling Services Inc. in Decision of Universal Service Administrator CC Dockets NO. 96-45 and 97-21.

Title of Decision being Appealed: Administrator's Decision on Appeal - Funding Year 2001-2002 (dated July 22, 2002)

Applicant Name: Banning Unified School District (Billed Entry Number: 143678)

471 Application Number: 226998

Funding Request Numbers: 523594, 523630, 523631, 523637, 523657, 523662, 523664, 523668, 523670, 552398

Ms. Dortch:

Almost 2 years ago, on September 20, 2002 Spectrum Communications Cabling Services Inc. ("Spectrum"), properly submitted to the Federal Communications Commission ("Commission") a Request for Review on the Decision of the Universal Service Administrator regarding Banning Unified School District's application and subsequent denial for E-Rate funding for Program Funding Year 2001-2002. (Attachments 1)

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ST. LO. 719706

Status Request of Appeal filed for Banning Unified School District
Page 2.

Additionally, Banning Unified School District also submitted a Letter of Appeal (dated October 16, 2002) to the Schools and Libraries Division of USAC (Universal Service Administrative Company). (Attachment 2)

Fifteen months ago, On February 10, 2003 the Federal Communications Commission (DA 03-393) 'Extended By an additional thirty (30) days to March 19, 2003' Banning Unified School District's request for review (File No. SLD-226998). (Attachments 3)

As of this day neither our appeal to the Federal Communications Commission, nor Banning Unified School District's appeal to the Schools and Libraries Division of USAC have had the opportunity for Review. This undermines the 'due process' which Banning and Spectrum have the right to review, and is unfair to both Banning Unified School District and Spectrum.

Certainly the Federal Communications Commission has reviewed appeals which came some time after the filing of Banning and Spectrum's appeal. For example, Ysleta Independent School District which was filed January 30, 2003 (SLD No. 3214790 and decided on December 4 2003.

The appeal before you is neither unique nor novel; it is a straight forward issue of the rules set forth by the Federal Communications Commission in the order known as *Copan*. (Attachments 4)

In this appeal, Banning Unified School District hired a consultant to help with its E-Rate filing. Spectrum responded and provided proposals to Banning Unified School District in response to its filing of the Form 470. Subsequently Spectrum was awarded several of the Internal Connection projects. After having submitted Banning's Form 471 to the SLD, its consultant, **without Banning's knowledge or approval** submitted a Service Provider Identification Number (SPIN) change to the SLD for one (1) Funding Request, that of the maintenance (FRN 523623). This resulted in the SLD denial of all of Banning's E-Rate application for Funding Year 2001-2002.

It is therefore our contention that the SLD did not comply with the rules dictated by the FCC in the *Copan* Order by allowing a SPIN change to occur which in turn resulted in the denial of the entire Form 470 because of 'vendor involvement', a clear rule violation.

Had the SLD followed the rules set forth by the Commission in the *Copan* Order, it would have determined that the consultant did not, notify the vendor (Spectrum) of the intended change of the SPIN and it was not allowable by California State law, the two requirements of the *Copan* Order.

Status Request of Appeal filed for Banning Unified School District
Page 3.

I write this letter to ask that you please make an immediate decision in this appeal. Both Banning Unified School District and Spectrum Communications have been harmed by this erroneous decision as well as the 2 years it has taken in which to have our appeal decided by the Commission.

Please help.

Respectfully Submitted,



Robert Rivera
President/CEO
Spectrum Communications

RR;ah

Attachments



SPECTRUM COMMUNICATIONS

CABLING SERVICES, INC.

September 20, 2002

By Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of: Request for Review by Spectrum Communications and Cabling Services Inc. of Decision of Universal Service Administrator
CC Dockets No. 96-45 and 97-21

Title of Decision Being Appealed: *Administrator's Decision on Appeal – Funding Year 2001-2002* (dated July 22, 2002)

Applicant Name: Banning Unified School District (Billed Entity Number: 143678)

471 Application Number: 226998

Funding Request Numbers: 523594, 523630, 523631, 523637, 523657, 523662, 523664, 523668, 523670, 552398

Dear Ms. Dortch:

Spectrum Communications and Cabling Services Inc. ("Spectrum"), pursuant to sections 54.719(c) and 54.722 of the rules of the Federal Communications Commission ("Commission" or "FCC"),¹ hereby requests that the Commission review a decision on appeal issued by the Schools and Library Division ("SLD") of the Universal Service Administrative Company ("USAC") on July 22, 2002, and direct SLD/USAC to fund all of the funding requests associated with the above-referenced Form 471 Application. In the alternative, Spectrum requests that the FCC direct USAC to modify the language on its website explaining its decision to deny funding for the above-referenced Form 471 Application.

¹ 47 C.F.R. §§ 54.719(c) and 54.722.

In accordance with section 54.721 of the Commission's rules,² Spectrum submits the following information in support of its request for review.³

I. Spectrum's Interest in the Matter Presented for Review

As a result of SLD's decision to deny in full the above-referenced appeal, Banning Unified School District ("Banning") is unable to fund work that it had contracted with Spectrum to perform pursuant to the above-referenced Form 471. In addition, SLD has posted an explanation of the underlying decision on its website, and the wording of that explanation may create the false impression that Spectrum violated the Commission's competitive bidding rules.

II. Statement of Material Facts

Following a competitive bidding procedure that took place in compliance with all relevant FCC and USAC rules, Spectrum was awarded a multiple year agreement with Banning during the E-Rate Program Year 3 application process. Banning then filed for additional E-Rate support during Program Year 4, using the Form 470 and awarded contract for Internal Connections and submitting an additional Form 470 for phone and ISP services. Both Form 470s listed Accurate Technology Group ("ATG") as the "contact" for Banning.⁴ Following a competitive bidding process that complied with all relevant rules, Spectrum and Verizon were selected as service providers for the E-Rate Program Year 4 services. Subsequently, ATG/Banning submitted a Form 471

² 47 C.F.R. § 54.721.

³ In accordance with 47 C.F.R. § 1.47, copies of this letter, with attachments, are being served by U.S. mail on September 20, 2002 to USAC, ATG and Banning, as indicated on the carbon copy list below.

⁴ See *Administrator's Decision on Appeal – Funding Year 2001-2002* (July 22, 2002). Based on Spectrum's information and belief, ATG provides Banning a full range of IT services, and is also responsible for filing Banning's E-Rate application on behalf of Banning.

Application listing ten funding request numbers ("FRNs") with Spectrum as the service provider, and one FRN identifying Verizon as the service provider. Under one of Spectrum's FRNs, Spectrum was to provide district-wide network equipment maintenance for Banning.

After ATG/Banning submitted Banning's Year 4 Form 471 Application, but before any E-rate Year 4 funding was committed to Banning, ATG established a Service Provider Identification Number ("SPIN") for itself and submitted a request to SLD seeking to have ATG replace Spectrum as the service provider for Banning's network equipment maintenance.⁵ ATG notified Spectrum of ATG's SPIN change request only after ATG submitted its request to SLD, despite the requirement under the Commission's *Copan* decision that an applicant seeking a SPIN change certify that (i) the SPIN change is allowed under state and local procurement rules and under the terms of the contract between the applicant and the original service provider, and (ii) the applicant has notified the original service provider of its intent to change service providers.⁶ Spectrum had no prior knowledge of ATG's intent to file the SPIN change request, and was both willing and able to perform the work for Banning identified by the relevant FRN.

In a Funding Commitment Decision Letter dated December 28, 2001, SLD denied in full Banning's E-Rate Program Year 4 Application. SLD based its decision on the fact that ATG had named itself as Banning's contact on the Form 470s, yet subsequently sought to serve as a vendor to Banning pursuant to a SPIN change request. According to the December 28 letter from SLD, ATG's actions constituted a "violation of the

⁵ To the best of Spectrum's knowledge, this "SPIN change request" was the first and only instance in which ATG has ever attempted to function as a service provider.

⁶ *Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma*, Order, 15 FCC Rcd 5498 (2000) ("*Copan*").

competitive bidding requirements" and justified a denial of all the funding requests listed on the associated Form 470s.

Banning appealed the December 28 decision to SLD, arguing that SLD should deny only the FRN for which ATG had requested a SPIN change. Banning argued that the FRNs associated with Spectrum, and the one associated with Verizon, should be considered for funding by SLD. In an Appeal Decision Letter dated July 22, 2002 (attached hereto as Attachment A), SLD denied Banning's appeal in full, noting that "a vendor, Accurate Technology Group, was listed as the contact for both Form 470s."

USAC subsequently posted data on its website indicating that with respect to Banning's E-Rate Program Year 4 application, Spectrum (as well as Verizon) was "not funded" because: "Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder." The service providers listed with Banning's application are Spectrum and Verizon, neither of whom violated the applicable competitive bidding rules. The data (a copy of the relevant portion of which is attached hereto as Attachment B) may create the erroneous impression that Spectrum and/or Verizon violated the competitive bidding rules because it does not explain that the decision not to fund was caused solely by the filing of an improper SPIN change request by a third party.

III. Questions Presented for Review

1. May SLD deny funding in connection with an otherwise proper Form 471 Application where there was no violation of the competitive bidding process up to and including the filing of valid Forms 470 and 471, but only a post-

bidding violation caused by an improper SPIN change request for one FRN filed after the Form 471 had already been submitted for approval?

2. If funding requests associated with a particular service provider have been denied due to the actions of a third party, should USAC's website make clear that the listed service provider did not violate the competitive bidding process rules?

IV. Statement of Relief Sought and Relevant Commission Orders

As explained further below, Spectrum requests that the Commission direct SLD to fund fully Banning's E-Rate Program Year 4 application, including all ten FRNs associated with Spectrum. In the event that SLD does not fund all of the FRNs associated with Spectrum, the Commission should direct USAC to modify its website to clarify that Spectrum was not to blame for the procedural violation that resulted in funding being denied.

A. The Commission Should Direct SLD to Fund Fully All FRNs Associated with Spectrum

The Commission should direct SLD to fund all FRNs listed on Banning's E-Rate Program Year 4 Form 471 Application because those FRNs were the result of a valid competitive bidding process conducted in compliance with the Commission's established requirements and policies for competitive bidding. The Commission held in its *MasterMind* decision that it is improper for any person named as the contact person in the applicant's Form 470 (or the employer of such named person) to participate in the bidding process because such participation "may significantly affect the submission of bids by other prospective bidders, thereby undermining the ability of the applicant to

obtain the most cost-effective bid.”⁷ Under such circumstances, the Commission has found that “a fair and open competitive bidding process has not occurred[,]” and that therefore “denial is appropriate in any instance in which the service provider is listed as the contact person and participates in the bidding process.”⁸

MasterMind is clearly distinguishable from the facts now before the Commission. Unlike the *MasterMind* scenario, Banning’s Year 4 Application did not involve a service provider that simultaneously served as the named contact in an applicant’s Form 470 and participated in the bidding process. ATG was listed as the contact on Banning’s Form 470s, but ATG did not participate in the competitive bidding process, nor was ATG awarded any service contracts pursuant to the competitive bidding process in which Banning selected Spectrum as a service provider. It was only *after* the end of the twenty-eight day competitive bidding period that ATG filed a SPIN change request and effectively attempted to select itself as a service provider for Banning. Unlike the *MasterMind* scenario, there is no evidence to suggest that ATG’s post-bidding SPIN change request in any way affected the submission of bids by other prospective bidders or undermined Banning’s ability to obtain the most cost-effective bid. To the contrary, Spectrum (and, to the best of Spectrum’s knowledge, Verizon and other bidders) submitted bids without any foreknowledge that ATG subsequently would submit a SPIN change request or otherwise seek to be considered as a service provider for Banning.

Moreover, because ATG’s SPIN change request both was defective on its face and did not taint the pre-existing competitive bidding process, SLD simply should have

⁷ *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, Order, 16 FCC Rcd 4028, ¶ 11 (2000) (“*MasterMind*”).

⁸ *Id.*

rejected the SPIN change request and left the results of the bidding process in place. There was no reason for SLD to take the additional step of denying all funding to Banning. Under the Commission's *Copan* decision, SLD should permit SPIN changes whenever an applicant certifies that: (i) the SPIN change is allowed under state and local procurement rules and under the terms of the contract between the applicant and the original service provider, and (ii) the applicant has notified the original service provider of the intent to change providers.⁹ *Copan*, however, does not reach the issue of how SLD should treat a SPIN change request that contains what may appear to be a proper certification, but otherwise is facially defective. Specifically, *Copan* does not address the instant situation in which a SPIN change request sought to substitute a service provider that is serving as the applicant's Form 470 contact in place of a service provider chosen through competitive bidding. A request to substitute an ineligible service provider should be patently obvious to SLD personnel charged with examining the SPIN change request, and thus should not be granted. The Commission therefore should clarify its SPIN change procedures to ensure that even if an otherwise apparently proper *Copan* certification is made, SLD should reject the SPIN change request – without prejudice to pending funding requests – when the SPIN change request is defective on its face.

Accordingly, the Commission should find that SLD should have denied the SPIN change request filed by ATG, and that the selections made in the competitive bidding process were properly made. The Commission therefore should direct SLD to fund all of

⁹ In the instant case, despite ATG's certification to the contrary, Spectrum received no prior notification of the SPIN change request. However, even if ATG's certification had been correct, the SPIN change request would still be facially defective, requiring its dismissal.

Banning's Program Year 4 Application funding requests for which Spectrum was the named service provider.

B. The Commission Should Direct USAC to Modify Its Website

As explained above, in noting that Spectrum was "not funded" for Banning's E-Rate Program Year 4 application, the data available on the SLD section of USAC's website creates the misleading impression that the work associated with Spectrum's FRNs was not funded because Spectrum had violated the competitive bidding rules. In data fields labeled "Commitment Status FCDL" and "Commitment Status TXT FCDL," the website denotes the project as "NOT FUNDED[.] Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder."¹⁰ In the field labeled "Service Provider Name," Spectrum is identified as the service provider. The website therefore seems to indicate that Spectrum is the service provider that triggered the competitive bidding violation. As a result, SLD runs the risk of unfairly damaging the reputation of Spectrum. The website may lead E-Rate applicants other than Banning (*i.e.*, potential customers of Spectrum) to conclude, incorrectly, that Spectrum caused a "competitive bidding violation" with respect to Banning. Based on this mistaken impression, such applicants may decide not to award Spectrum service provider contracts in the future.

The Commission should direct USAC to modify its website data by including language in the explanation for a denial of funding that either identifies the culpable party or that explains that a non-culpable service provider was denied funding due to the

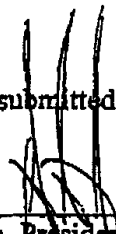
¹⁰ See Attachment B.

improper actions of a third party. The website should be revised to include language such as the following: "A competitive bidding violation occurred because the associated Form 470 named a third-party service provider as the contact, and that contact participated in the competitive bidding process as a bidder."

V. Conclusion

For the foregoing reasons, Spectrum requests that the Commission grant the relief sought in this request.

Respectfully submitted,



Robert Rivera, President
Spectrum Communications and Cabling Services Inc.
226 North Lincoln Avenue
Corona, CA 92882
Telephone Number: (909) 371-0549
Fax Number: (909) 273-3114
E-mail Address: rivera@spectrumccsi.com

cc: Mr. Carlos Perez, Accurate Technology Group (ATG)
Dr. Kathy McNamara, Banning Unified School District
Universal Service Administrative Company

Attachments

ATTACHMENT A

07/25/02 14:59 FAX



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

July 22, 2002

Dr. Kathy McNamara
Superintendent
Banning Unified School District
151 W. Williams Street
Banning, CA 92220

RECEIVED
JUL 25 2002
SUPERINTENDENT
OF SCHOOLS

Ref: Billed Entry Number 143078
471 Application Number 226998
Funding Request Number(s) 523594, 523630, 523631, 523637, 523657,
523662, 523664, 523668, 523670, 523698
Your Correspondence Dated January 22, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number 523594, 523630, 523631, 523637, 523657,
523662, 523664, 523668, 523670, 523698

Decision on Appeal: Denied in full

- You have stated in your appeal letter that the vendors for these funding requests, Spectrum Communications, Verizon California, Inc. and Verizon Internet Solutions are not a point of contact on your Form 470 and therefore there was not a violation of the competitive bidding process. You do understand that the SPIN change you requested for FRN 523623 might appear a violation of competitive bidding.
- Upon review of the Form 470s, #928580000312291 and #127280000261241, cited on the funding requests being appealed, it is clear that a vendor, Accurate Technology Group, was listed as the contact for both Form 470s. Once this violation has been identified all funding requests that cite these ineligible Form 470s must be denied according to program rules.

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981
Visit us online at <http://www.fcc.usac.org>

TOTAL P.03

These funding requests were denied because the associated Form 470s contained service provider contact information. A competitive bidding violation occurs when the service provider associated with the Form 470 participates in the competitive bidding process. As you have stated the contact phone number listed for ATG is the same as the contact number of your Form 470s.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service, FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the Appeals Procedure posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company